



BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

Arizona Corporation Commission

DOCKETED

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DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF COX ARIZONA TELCOM, LLC FOR
EXTENSION OF ITS WAIVER OF RULE
805 OF THE PUBLIC UTILITY HOLDING
COMPANIES AND AFFILIATED
INTEREST RULES (A.A.C. R14-2-801 *et*
seq.)

DOCKET NO. T-03471A-08-0043

DECISION NO. **70486**

ORDER

Open Meeting
August 26 and 27, 2008
Phoenix, Arizona

BY THE COMMISSION:

Introduction

On January 23, 2008, Cox Arizona Telcom, LLC ("Cox Arizona or Cox") applied for an extension of the limited, 24 month waiver of A.A.C. R14-2-805 ("Rule 805") that was granted to Cox Arizona in Decision No. 68299. That waiver expired on November 14, 2007. Unless granted another waiver, Cox will be required to comply with Rule 805 within a time¹ set by the Commission order following a decision in this matter.

A.A.C. R14-2-805 is part of the Commission's Public Utility Holding Company and Affiliated Interest Rules (R14-2-801, *et seq.*) and requires all Class A investor-owned public utilities to file a description of their diversification plans for the current year by April 15th.

Staff recommends:

1. that Cox Arizona's petition for a continued waiver of Rule 805 be denied; and

¹ Rule 805 information is submitted by April 15.

2. that Cox Arizona be required to comply with Rule 805 within 60 days of a decision in this matter; and

3. that Cox Arizona be required to provide the Commission an audited Income Statement and Balance Sheet, with corresponding notes, within 60 days of a decision in this matter.

FINDINGS OF FACT

Background

1. In Decision No. 60285, dated July 2, 1997, Cox Arizona received a Certificate of Convenience and Necessity ("CC&N") to provide intrastate competitive local exchange and resold long distance telecommunications services in Arizona.²

2. On May 17, 2000, in Decision No. 62582, the Commission granted Cox Communications, Inc. ("Cox"), Cox Arizona and all of Cox Arizona's affiliates a waiver of A.A.C. R14-2-805 for a 30 month period.³ In addition, the Commission granted Cox, Cox Arizona and all of Cox Arizona's affiliates a limited waiver of A.A.C. R14-2-803 ("Rule 803") and R14-2-804 ("Rule 804"). Pursuant to the partial waiver under Rule 803, Cox, Cox Arizona and all of Cox Arizona's affiliates need to file a notice of intent to enter into transactions when there is a: (1) significant increase in capital costs of the Arizona operations; (2) significant additional costs allocated or charged directly to the Arizona jurisdiction; or (3) significant reduction of net income to the Arizona operations.⁴ Under the Rule 804 limited waiver, Cox, Cox Arizona and all of Cox Arizona's affiliates need only obtain Commission approval for transactions that are likely to have a material adverse effect on Arizona operations.⁵

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² See, In the Matter of the Application of Cox Arizona Telcom, Inc. for a Certificate of Convenience and Necessity to Provide Competitive Intrastate Telecommunications Services and Petition for Competitive Classification of Proposed Services, U-3242-96-442.

³ See, In the Matter of the Application of Cox Arizona, L.L.C. for Approval of a Waiver of the Public Utility Holding Companies and Affiliated Interest Rules, Docket No. T-03471A-00-0092.

⁴ *Id.* at page 8.

3. On September 16, 2003, the Commission granted Cox, Cox Arizona and all of Cox Arizona's affiliates a waiver of A.A.C. R14-2-805 for a 30 month period from the date of November 17, 2002 in Decision No. 66234.⁶

4. On November 14, 2005, in Decision No. 68299, the Commission granted Cox Arizona its most recent waiver of Rule 805 for a period of 24 months.⁷

Staff's Discussion

5. Based on annual reports ending December 31, 2006, Cox Arizona meets the criteria of a Class A utility as defined by the Commission's Rules. Cox Arizona generated more than \$1.0 million of Arizona jurisdictional revenue qualifying it as a Class A utility under Commission's Rules.⁸

6. R14-2-805 requires public service corporations subject to its provisions to provide the following information.

1. The name, home office location and description of the public utility's affiliates with whom transactions occur, their relationship to each other and the public utility, and the general nature of their business;
2. A brief description of the business activities conducted by the utility's affiliates with whom transactions occurred during the prior year, including any new activities not previously reported;
3. A description of plans for the utility's subsidiaries to modify or change business activities, enter into new business ventures or to acquire, merge or otherwise establish a new business entity;
4. Copies of the most recent financial statements for each of the utility's subsidiaries;

⁵ *Id.*

⁶ See, In the Matter of the Application of Cox Arizona Telcom, LLC for a Waiver of Rule 805 of the Public Utility Holding Companies and Affiliated Interest Rules, Docket No. T-03471A-03-0237.

⁷ See, In the Matter of the Application of Cox Arizona Telcom, LLC for a Waiver of Rule 805 of the Public Utility Holding Companies and Affiliated Interest Rules, Docket No. T-03471A-05-0357.

⁸ Staff notes that Cox had the option to file an application for extension at anytime, but chose to do so on January 23, 2008 over 2 months after the current extension expired. The delayed submission leaves the Commission with little time to consider Cox's application before April 15, 2008, the date by which Cox acknowledges it must file its Rule 805 information unless granted a waiver. The manner in which Cox has filed its application places an unnecessary and unwelcomed burden on Commission resources.

5. An assessment of the effect of current and planned affiliated activities on the public utility's capital structure and the public utility's ability to attract capital at fair and reasonable rates;
6. The bases upon which the public utility holding company allocates plant, revenue and expenses to affiliates and the amounts involved; an explanation of the derivation of the factors; the reasons supporting that methodology and the reasons supporting the allocation;
7. An explanation of the manner in which the utility's capital structure, cost of capital and ability to raise capital at reasonable rates have been affected by the organization or reorganization of the public utility holding company;
8. The dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer;
9. Contracts or agreements to receive, or provide management, engineering, accounting, legal, financial or other similar services between a public utility and an affiliate;
10. Contracts or agreements to purchase or sell goods or real property between a public utility and an affiliate; and
11. Contracts or agreements to lease goods or real property between a public utility and an affiliate.

7. Cox Arizona, in its application, sets out many of same reasons in support of its request for a waiver of Rule 805 as contained in its earlier applications.

8. First, Cox Arizona argues that its operations represent a very small piece of Cox's overall operations and thus the application of Rule 805 would be unreasonably costly and burdensome.⁹ Cox Arizona goes on to argue that it would be required to provide the Commission with voluminous information concerning corporate diversification activities and plans.¹⁰ Cox Arizona further states that it would have to file, in addition to these diversification plans, financial statements for each subsidiary, a description of the plans for the utilities' subsidiaries to change business activities, an assessment of the effect of planned affiliated activities on the utility's capital structure, the bases upon which the holding company allocates costs, the dollar amount transferred between the utility and each affiliate, and most contracts between affiliates and the utility.

⁹ Cox Arizona's petition at page 2.

¹⁰ *Id.*

1 9. Consistent with its previous applications, Cox again provided no cost, time or
2 resource estimates in this application for Staff to support its assertions. Moreover, many
3 companies in Arizona comply with Rule 805, some with operations not much different in size than
4 Cox Arizona. Cox stated that it complying with Rule 805 would "involve hundreds of man-hours
5 and several thousands of dollars to compile and review affiliate transactions between Cox Arizona,
6 its parent companies and all of the affiliates to determine what relates to Rule 805 annual reporting
7 requirements."¹¹

8 10. Second, Cox argues that it operates in a competitive market and does not possess
9 monopoly power¹² and thus should not have to comply with Rule 805. Cox argues that due to
10 competitive market forces it has no incentive to charge unduly high or above market prices that
11 could be used to fund or subsidize unregulated affiliates or to commingle utility and non-utility
12 funds in a manner that is hurtful to Arizona consumers.¹³ But, this argument by Cox Arizona
13 ignores the fact that it is now the second largest facilities based telecommunications provider in
14 Arizona. The pervasiveness of its operations in the Phoenix metropolitan area forms much of the
15 basis for a recent petition for forbearance of dominant carrier regulation and other regulations filed
16 by Qwest Corporation ("Qwest") several months ago at the Federal Communications Commission
17 ("FCC"). The local telecommunications market in Phoenix can reasonably be characterized as a
18 duopoly, with Qwest and Cox Arizona as the dominant market participants.

19 11. Further, much of the new development in the telecommunications market in
20 Arizona is in the provision of service to large Master Planned Communities ("MPCs"). A
21 common pattern in this segment of the marketplace involves either Cox or Qwest providing service
22 to MPCs through the use of Preferred Provider Agreements ("PPAs"). Through a PPA, the
23 developer typically agrees to exclusively market the telecommunications services of one provider.
24 Many times under such circumstances, the entry of other providers into an MPC is rare and

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28 ¹¹ Cox Arizona petition at page 3.

¹² Cox Arizona petition at page 4.

1 competition typically does not materialize. So, contrary to the allegations in Cox Arizona's
2 petition for a waiver, there are many instances in which Cox Arizona does exercise monopoly
3 power.

4 12. In addition, Cox Arizona is beginning to provide Voice over Internet Protocol
5 ("VoIP") in portions of its service areas. While Cox Arizona has informed Staff that it will adhere
6 to Commission regulations with respect to VoIP, Cox Arizona has provided the Commission with
7 no information on the extent of its VoIP offerings at this time. Compliance with Rule 805 is likely
8 to provide some additional information to the Staff and the Commission with respect to Cox's
9 activities at this time.

10 13. Finally, Cox Arizona's main competitors have not been granted permanent waivers
11 of Rule 805. These entities include Qwest, SBC/AT&T and Verizon/MCI. Staff does not believe
12 there is any reason to grant Cox Arizona a waiver when its key competitors must comply with
13 Rule 805.

14 14. Third, Cox Arizona's recent history before the Commission also presents additional
15 reasons why Rule 805 information should be required. In the last few years, Cox Arizona has been
16 the subject of two major formal complaint proceedings before the Commission. Those are:

- 17 - In the Matter of the Formal Complaint against Cox Arizona Telcom, LLC filed
18 by Qwest Corporation for breach of the parties' Interconnection Agreement, T-
01051B-06-0045, T-03471A-06-0045.
- 19 - In the Matter of the Formal Complaint of Accipiter Communications, Inc.
20 against Vistancia Communications, L.L.C., Shea Sunbelt Pleasant Point, L.L.C.,
21 and Cox Arizona Telcom, L.L.C., T-03471A-05-0064.

22 15. In both of these complaint proceedings, the complainants alleged non-compliance
23 with Commission rules and orders. In addition, one of the complaints alleged anti-competitive
24 conduct by Cox Arizona and its affiliates. Neither of these complaint proceedings have been
25 resolved at this time.

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¹³ *Id.*

Staff's Analysis

16. Through data requests, Staff attempted to validate the estimate of "hundreds of man-hours" and "thousands of dollars" alleged by Cox that would be needed to comply with the submission of Rule 805 information. Staff's findings are as follows:

- Staff's first set of data requests sought support for Cox Arizona's cost estimates to comply with Rule 805. In response, Cox explained, in part, that "Cox did not perform any specific advanced methodology or analysis to determine the number of hours or estimate of dollars it would cost to comply with Rule 805."
- In its second set of data requests, Staff sought to validate Cox's estimates by seeking limited Rule 805 information for only Cox Arizona affiliates operating in Arizona, California, Nevada and Oklahoma. Cox was unable to provide any information.
- Through its third set of data requests, Staff was able to confirm the 87 Cox Arizona affiliates stated in Cox Arizona's application. Cox's organization is considered confidential and cannot be provided in this public report.
- In its third set of data requests, Staff also asked for limited Cox information for only those affiliates with whom Cox Arizona transactions occurred. Cox responded in part that "Cox objects to this request as unduly burdensome and overbroad. While this request seeks to narrow the information requested regarding affiliates and transactions to just transactions occurring within the last year, it still requests information that Cox is seeking to gain the waiver from providing."
- Staff's fourth set of data requests asked Cox Arizona to explain how Staff's third set data request could be considered "unreasonably costly or burdensome". Cox responded that "The requested information, although narrowed, will still require an extensive review of all affiliates of Cox Arizona including time and resources to inspect each and every business activity that occurred within the last twelve months."
- In its fifth set of data requests, Staff asked Cox Arizona to "Please indicate if Cox Arizona have (had) any transactions during 2007 with any affiliates listed below (a simple table of Cox affiliates was provided) by placing a Yes or No in the column to the right of the affiliate's name." Cox did not provide any Yes or No indications and explained that "Cox objects to this question in that it is unduly burdensome and irrelevant. The requested information, although narrowed, will still require an extensive time and resources to inspect each and every business activity that occurred within the last twelve months for Cox Arizona Telcom."
- In its sixth set of data requests, Staff requested an audited Income Statement and Balance Sheet for Cox Arizona. Cox responded by explaining it did not have

audited financials to provide but did point Staff to the information included in its Annual Reports.

- In its seventh set of data requests, Staff asked "Did Cox Arizona conduct any transactions with any Arizona affiliate in 2007?" If yes, Cox was asked to provide limited transaction information. Cox did not provide any data, responding in part "Cox states that if the request inquires about transactions with Cox Arizona Telcom affiliates that conduct business only in Arizona, then there are no such transactions."
- In its eighth set of data requests, Staff clarified what appeared to be Cox's misunderstanding of data request seven by asking limited information on at least one Arizona affiliate, as follows.
 - a. Did Cox Arizona conduct any transactions with at least one Arizona affiliate in Arizona in 2007? If yes, please provide:
 - b. the name of one Arizona affiliate with whom any transactions were conducted by Cox Arizona in Arizona in 2007;
 - c. the nature or description of any transactions conducted in Arizona in 2007 with the one Arizona affiliate named by Cox Arizona in response to STF 8.1 (a) above;
 - d. the number or estimated number of any transactions conducted in Arizona in 2007 with the one Arizona affiliate named by Cox Arizona in response to STF 8.1 (a) above;
 - e. the expenses paid by Cox Arizona for any transactions conducted in Arizona in 2007 to the one Arizona affiliate named by Cox Arizona in response to STF 8.1 (a) above; and
 - f. the expenses paid by the one Arizona affiliate named by Cox Arizona in response to STF 8.1 (a) above for any transactions conducted in Arizona in 2007.

17. On June 10, 2008, Cox responded to Staff's eighth data set with confidential information for one Arizona affiliate. The response equaled approximately 1/3rd of a standard 8x11 page and consisted of 97 words specific to 8.1.a to 8.1.e. Cox's response makes clear that Cox Arizona has no affiliate transactions with this affiliate. The Arizona affiliate referenced is simply a customer to whom Cox Arizona provides telecommunications services pursuant to Cox's approved Arizona tariff. Cox's response for one of its 87 affiliates appears to have required pennies and minutes and by any measure cannot be considered to be unreasonably costly or

1 burdensome. Staff must, therefore, assume that Cox's explanation that compliance with Rule 805
2 "would involve hundreds of man-hours and several thousands of dollars" applies to only 86 of
3 Cox's stated 87 affiliates.

4 **Staff's Conclusion**

5 18. Staff takes exception to the manner in which Cox applied for an extension of the
6 Rule 805 waiver it received in Decision No. 68299. Cox understood that its waiver expired on
7 November 14, 2007, yet did not apply for another waiver until January 23, 2008, over two months
8 following the expiration of its earlier waiver and less than three months before Class A companies
9 were required to comply with Rule 805 on April 15, 2008. Cox did not comply with Rule 805 on
10 April 15 and as such is technically out of compliance with Commission rules. Cox may contend
11 that this application was filed before compliance with Rule 805 was required, nonetheless, the time
12 dilemma was created by Cox not filing well in advance of the expiration of the waiver granted by
13 Decision No. 68299.

14 19. Cox's contention that compliance with Rule 805 is "unnecessary and unreasonably
15 burdensome"¹⁴ is not supported by the sum of Staff's analysis. Given the major dockets involving
16 Cox that remain unresolved, the apparent lack of the regulatory transparency in Cox Arizona's
17 operations adds weight to the need for compliance with Rule 805. Furthermore, Staff is unable to
18 find any detailed support for Cox Arizona's application and is surprised that despite numerous
19 opportunities Cox Arizona has been unable to provide even simple limited support which could
20 have potentially been extrapolated to the full set of Cox's 87 affiliates. Staff is left, therefore, with
21 only Cox's limited data request responses to evaluate:

- 22
- 23 1. Cox admits it performed no analysis to support its contention that compliance
24 with Rule 805 would be unreasonably costly or burdensome and Cox did not
25 provide any support for statements that could be supported by samples of
26 information.
 - 27 2. When asked to submit limited information which would help Staff estimate the
28 reasonableness of Cox's waiver request, Cox did not provide any information.
Staff, therefore, has no way to estimate if Cox's compliance with Rule 805

¹⁴ Cox Arizona's petition at page 3.

would consist of one page or hundreds of pages; would involve one hour or hundreds of hours; or, would cost one dollar or several thousand dollars. Staff is forced to believe that Cox's estimate of "hundreds of man-hours and several thousands of dollars" is only a guess.

3. Cox contends that compliance with Rule 805 would require reviewing information from potentially all 87 of its affiliates, yet, when asked a simple Yes/No question by Staff in data set five, Cox was unable to respond that it conducted transactions with even one affiliate in 2007. If Cox's estimate of "hundreds of man-hours and several thousands of dollars" is even remotely correct, then the manner in which Cox responded to the simplest of data requests, suggests a determination on Cox's part to not comply in any fashion with Rule 805.
4. Cox Arizona was unable to provide the audited Income Statement and Balance Sheet for 2007 that Staff requested. Staff notes that the Annual Report information to which Cox referred Staff was not only unaudited but consisted of summary information - four Income Statement line items and six Balance Sheet line items - three Asset line items and three Liabilities and Shareholders' Equity line items.
5. Most importantly, Staff must convey its concerns about a recurring theme not only in Cox's application but in Cox's data responses. The complexity of Cox Arizona's parent company, its structure and, perhaps its record-keeping, appear be repeatedly cited or suggested as justifications for requesting a waiver of Rule 805. Rather than supporting Cox's application, the sum of these statements highlight the Commission's grave need for Cox's compliance with Rule 805. It is essential for the Commission to understand that Cox Arizona's operations are fully transactional¹⁵. Staff is not aware of any other Arizona CLEC or ILEC as totally dependent on its subsidiaries as Cox Arizona. By the form and nature of the data request responses in this matter, Cox Arizona has illustrated that Cox's unregulated operations are intertwined to a significant extent with its regulated operations. This situation may be particularly true of Cox's service provision service in Master Planned Communities ("MPCs"). Given the significant growth in Cox's regulated operations, Staff believes that compliance with Rule 805 is becoming increasingly important.

20. When Cox Arizona received its CC&N in 1997 Rule 805 was already in place. Cox Arizona knew it would need to comply with Rule 805. The dilemma for which Cox seeks a waiver is one of its own making.

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¹⁵ Cox's response to STF 6.6.3 indicates that Cox Arizona consists of one employee.

21. The increasing significance of Cox Arizona to the competitive local exchange situation should be reason alone for denying a continued waiver of Rule 805. Although not yet the size of its main competitor, Qwest, Cox Arizona is, if not a monopoly provider with carrier of last resort responsibilities, the dominant provider in many Master Planned Communities and many geographic areas¹⁶. The significance of Cox Arizona is the fundamental basis on which Qwest filed a Forbearance Petition with the FCC.

22. There is no CLEC of which the Commission should be more completely informed than Cox Arizona, yet, the Commission knows virtually nothing about the dependence of Cox Arizona on its affiliates. Cox Arizona consists of one employee – everything else is a guess.

23. For the reasons stated above, Staff recommends:

1. that Cox Arizona's petition for a continued waiver of Rule 805 be denied; and
2. that Cox Arizona be required to comply with Rule 805 within 60 days of a decision in this matter; and
3. that Cox Arizona be required to provide an audited 2007 end-of-year Income Statement and Balance Sheet, with corresponding notes, within 60 days of a decision in this matter.

CONCLUSIONS OF LAW

1. Cox Arizona Telcom, LLC is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Cox Arizona Telcom, LLC and of the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated July 15, 2008, concludes that it is not in the public interest to grant Cox Arizona Telcom, LLC a waiver of A.A.C. R14-2-805 as requested.

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¹⁶ Supporting information available filed by Staff with the FCC pertaining to the Phoenix MSA Forbearance petition is confidential.

ORDER

IT IS THEREFORE ORDERED that Cox Arizona Telcom, LLC's application for a waiver of AAC R14-2-805 is denied.

IT IS FURTHER ORDERED that Cox Arizona Telcom, LLC shall comply with its 2007 Rule 805 filing within 60 days of the date of this order.

IT IS FURTHER ORDERED that Cox Arizona Telcom, LLC be required to provide the Commission an audited 2007 end-of-year Income Statement and Balance Sheet, with corresponding notes, within 60 days of the date of this order.

IT IS FURTHER ORDERED that all Arizona residential consumers of telecommunications services should have the opportunity to arbitrate disputes over billing and unauthorized charges for all modes of telecommunications services before the Commission. Cox Arizona Telcom, LLC consents to participate in a binding arbitration program administered by the Commission (the "Arbitration Program"). The Arbitration Program will apply to all Arizona residential customers of Cox Arizona Telcom, LLC and/or its affiliates that offer or bundle telecommunications services, including but not limited to wireline, wireless and VoIP telephony.

IT IS FURTHER ORDERED that the Arbitration Program shall be administered within the Consumer Services Section of the Utilities Division, and shall embrace Arizona residential customer disputes relating solely to billing and unauthorized charges for all modes of telecommunications services. The Arbitration Program expressly includes wireline, wireless and/or VoIP services offered or bundled by Cox Arizona Telcom, LLC and/or its affiliates.

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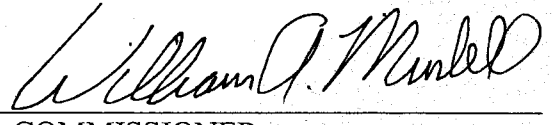
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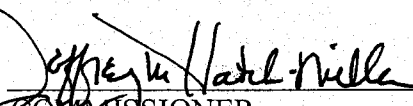
1 IT IS FURTHER ORDERED that on deciding a dispute between Cox Arizona Telcom,
2 LLC and/or its affiliates and any of its customer(s) through the Arbitration Program established by
3 this Decision, the Commission shall forego imposing any monetary sanction, except restitution in
4 any form, including billing credits, against any participant in the Arbitration Program.

5 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

6 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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9 CHAIRMAN

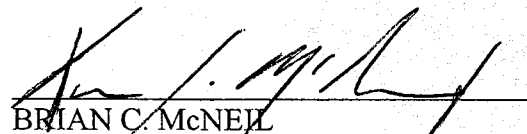

COMMISSIONER

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COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto, set my hand and caused the official seal of this
16 Commission to be affixed at the Capitol, in the City of
17 Phoenix, this 3rd day of September, 2008.

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19 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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21 DISSENT: 

22 DISSENT: _____

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